SUPPORTING BRIEF.

I.

The applicability of the Illinois Compensation Act was not open to question, since there was a final judicial determination of this question by a court of competent jurisdiction.

Const. of the U. S., Art. IV, Sec. 1;
Fauntleroy v. Lum, 210 U. S. 230;
Am. Exp. Co. v. Mullins, 211 U. S. 311;
Restatement, Conflict of Laws, Chap. 10, Sec. 431.

II.

The judgment of the Supreme Court of Missouri entered on the 11th day of December, 1940, reversing outright the judgment of the Circuit Court of the City of St. Louis, Missouri, is a final judgment of Missouri.

Secs. 1063 and 1065, Revised Statutes Mo. 1929;
Donnell v. Wright, 199 Mo. 304, 97 S. W. 928;
Ginnochio v. Illinois Central R. R. Co., 264 Mo. 516, 175 S. W. 196;
Abbott v. Kansas City Elevated Ry. Co., 232 Mo. 660, 135 S. W. 1199;
Berry v. Majestic Milling Co., 304 Mo. 292, 263 S. W. 406;
Strottman v. St. Louis-Iron Mountain & Southern R. Co., 228 Mo. 154, 128 S. W. 187, 30 L. R. A. (N. S.) 377;
Walsh Const. Co. v. United States Guaranty Co. (C. C. A. 8), 76 Fed. (2) 240;
Sabol v. St. Louis Cooperage Co. (Mo. Sup.), 31 S. W. (2) 1041.

ARGUMENT.

The first question presented is that the Missouri Supreme Court erred in holding that the courts of Missouri may inquire into the facts of the case, and may declare that your petitioner was operating under, and his remedy controlled by, the Illinois Compensation Act after an Illinois court of competent jurisdiction has rendered a final decision that under the particular facts the Illinois Compensation Act did not apply to your petitioner, and the remedy provided thereunder was not given to him.

Your petitioner in his reply to the defendant's answer filed in the Circuit Court of the City of St. Louis wherein the defense of the applicability of the Illinois Compensation Act was raised, pleaded that he had filed a claim which was heard by an arbitrator and appealed by the employer, and affirmed by the full Commission, and then further appealed to the Circuit Court of Madison County, Illinois, the situs of the accident and the domicile of plaintiff; that the Circuit Court of Madison County, Illinois, reviewing the evidence adduced by the parties, held that under the law and the evidence your petitioner was not entitled to compensation under the Illinois Workmen's Compensation Act, inasmuch as his injuries did not arise out of and in the course of his employment within the meaning of those words as used in the Illinois Compensation Act. A duly authenticated and certified copy of this judgment was introduced in evidence by the plaintiff, your petitioner, who also showed that the Circuit Court of Madison County, Illinois, had the power and right to enter such a judgment between the parties, and also had the right to apply the Illinois law to the facts, and had complete jurisdiction of the appeal from the Illinois Workmen's Compensation Act. By stipulation, which appears opposite abstract pages 83 and 84, the defendant admitted that the

proceedings were held with reference to the application for compensation as set forth in the plaintiff's reply, and also admitted that the proceedings of the Circuit Court of Madison County were accurate.

This, then, leads us to the following proposition: Can a Missouri court go behind the Illinois judgment, which has been duly pleaded and proved, and inquire into the merits of the original cause of action to determine if the Illinois Court ruled correctly? We think that the Missouri Court has no such power, but must, on the other hand, recognize and support the Illinois decree, which conclusively determines that your petitioner had no right to recover under the provisions of the Illinois Workmen's Compensation Act.

Article IV, Section 1, of the United States Constitution, provides as follows:

> "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may, by general law, prescribe the manner in which said acts, records and proceedings shall be proved to the effect thereof."

This question of the applicability of the Illinois Compensation Act has been decided by a court of competent jurisdiction, and under the above provisions of the United States Constitution the courts of Missouri are required to give such judgment of the Illinois Court full faith and credit; that is, they must give them the credit which they would have in the State of Illinois.

The opinion of this Court in the case of Fauntleroy v. Lum, 210 U. S. 230, is in accord with the rule above stated. In that case there was an appeal from the Supreme Court of the State of Mississippi. The plaintiff in the action below had sued on a Missouri judgment against the defendant arising out of a grain futures transaction. The

plaintiff had prevailed in his Missouri action, and then brought suit on the judgment in the state courts of Mississippi.

The defense was that the cause of action was barred in the State of Mississippi, where the transaction had taken place, and therefore the judgment of the Court of Missouri was not valid in finding against the defendant. The plaintiff, in answer to this, stated that under the full faith and credit clause of the United States Constitution, whether this judgment was based upon a mistake of law or fact, made no difference, since he had a final judgment of a court of competent jurisdiction. This Honorable Court decided that, even though the judgment could not have been obtained in Mississippi, the judgment of the Court of Missouri was entitled to the full faith and credit protection guaranteed by the Federal Constitution, and declared (210 U. S., l. c. 237):

> "A judgment is conclusive as to all the media concludendi, U. S. v. California & Oregon Land Co., 192 U. S. 355; and it needs no authority to show that it cannot be impeached either in or out of the state by showing that it was based upon a mistake of law. Of course, want of jurisdiction over either the person or the subject matter might be shown. Andrews v. Andrews, 184 U. S. 14; Clark v. Clark, 178 U. S. 186. But as the jurisdiction of the Missouri Court is not open to dispute, the judgment cannot be impeached in Mississippi even if it went on a misapprehension of the Mississippi law. See Goddard v. Gray, L. R. 6 Q. B. 139; McDonald v. Grand Trunk Ry. Co., 71 N. H. 448; Peet v. Hatcher, 112 Ala. 514."

To like effect see also American Express Company v. Mullins, 212 U. S. 311.

Missouri has been in conformity to the rule set forth in the above cases, particularly the Fauntleroy case, and

this is illustrated by the case of Howey v. Howey (Mo. Sup.), 240 S. W. 450. In that case the plaintiff sued for a divorce and alleged sufficient to make a prima facie case. The defendant, answering, set up a prior divorce in the State of Florida, and plaintiff's petition was dismissed. In that opinion the Supreme Court of Missouri holds that a judgment of another state may be questioned only for (1) jurisdiction over the subject matter, (2) failure to give legal notice to the defendant and (3) where there has been some fraud in the concoction of the judgment, as where it is made to appear that the defendant appeared when in fact there was no authorized appearance.

In the Restatement on the Conflict of Laws, Chapter 10, Sec. 431, the general rule is thus stated:

> "A valid foreign judgment will not be denied recognition because of error of law or fact in the proceedings before judgment."

In U. S. ex rel. Bank v. Lufcy, 329 Mo. 1224, 49 S. W. (2) 8, in speaking of the effect of a judgment of another court on the same matter then before the Court, the Supreme Court of the State of Missouri uses the following language:

> "It is the familiar principle of the doctrine of res adjudicata that even though a judgment may be erroneous (not void) so that it may have been reversed on appeal, it is nevertheless effective as a bar to further suit. 34 C. J. 768, Sec. 1184; 15 R. C. L. 967, Sec. 4333. It is also well settled that a former judgment is a bar not only to all matters which were raised, but also as to all defenses which could have been raised. 34 C. J. 56, Sec. 1267; 15 R. C. L. 962, Sec. 430."

Other decisions of the courts of Missouri to the same effect are also Holland v. Ry., 36 S. W. 29; Payne v. O'Shea, 84 Mo. 129, 135; Hudson-Kimberley Publishing

Co. v. Young, 90 Mo. Ap. 505; Hamil v. Talbot, 72 Mo. Ap. 22.

In view of the pronouncement of this Honorable Court, and also of the Missouri Supreme Court, we think it is conclusive that the Supreme Court of Missouri erred when it held that the courts of Missouri had the right to go beyond the final judgment of the court of the State of Illinois between the same parties, on the same set of facts presented in both records. This holding is contrary to the Constitution of the United States and the decisions of this Court construing Article IV, Sec. 1, of said Constitution. This question was raised as soon as your petitioner had the right to do so, namely, in his Reply filed in the Circuit Court of the City of St. Louis, Missouri. This point was preserved throughout the entire proceeding, and was called to the attention of the Missouri Supreme Court in your petitioner's Brief and also in his Motion for Rehearing filed with that court.

II.

The decision of the Missouri Supreme Court is a final judgment entered on the 11th day of December, 1940, when the motion for rehearing was overruled.

Section 1063 of the Revised Statutes of Missouri 1929, so far as it is applicable to the facts before this Court, reads as follows:

> "The Supreme Court, St. Louis Court of Appeals, Kansas City Court of Appeals, in appeals and writs of error, shall examine the record and award a new trial, reverse or affirm the judgment or decision of the Circuit Court, or give such judgment as such court ought to have given as to them shall seem agreeable to law; * * *."

Section 1065 of the Revised Statutes of Missouri 1929 provides as follows:

> "The Supreme Court, upon the determination of any cause in appeal or error, may award execution to carry the same into effect, or may remit the record, with their decision thereon, to the Court from whence the cause came, and such determination shall be carried into execution by such court."

The opinion of the Supreme Court of Missouri distinctly shows that the merits of the cause were passed upon by the Supreme Court of Missouri, that Court holding that under the facts involved the defendant was under neither statutory nor common-law liability to the plaintiff.

In the light of the foregoing it becomes manifest that the judgment of the Supreme Court of Missouri is final, in that it reverses the judgment and decision of the Missouri Circuit (trial) Court, gave such judgment as seemed to the Supreme Court of Missouri to be agreeable to law, awarded restitution to the appellant and awarded execution to carry the judgment of that court into effect.

At the same time, said judgment of the Supreme Court of Missouri did not remit or remand the case to the trial court for further proceedings to carry the judgment of the Supreme Court of Missouri into execution, such remission or remand being optional under Section 1065 of the Revised Statutes of Missouri 1929, and **the trial court was thereby deprived of all jurisdiction to further proceed in this cause.** Donnell v. Wright, 199 Mo. 304, 97 S. W. 928; Ginnochio v. Ill. Cent. Ry. Co., 264 Mo. 516, 175 S. W. 196; Abbott v. Kansas City Elevated R. Co., 232 Mo. 616, 135 S. W. 1199; Berry v. Majestic Milling Co., 304 Mo. 292, 263 S. W. 406.

In Strottman v. St. Louis-Iron Mountain & Southern Ry. Co., 228 Mo. 154, 186, 128 S. W. 187, 30 L. R. A. (N. S.) 377, the Missouri Supreme Court en banc distinctly said:

> "By statute we are authorized to enter judgment of

simple reversals, and these judgments may or may not be finalities. **If the merits of the cases are adjudicated and passed upon, they are final.** * * * So that, considering the whole statute, we are of the opinion that a reasonable construction thereof precludes the plaintiff from again suing after a judgment of reversal in a case wherein the merits of the controversy have been investigated, and adjudicated by the Court, and this fact is one of easy determination."

In the more recent case of Sabol v. St. Louis Cooperage Co. (Mo. Sup.), 31 S. W. (2) 1041, in discussing a previous decision of that same case in 313 Mo. 527, 282 S. W. 425, the Missouri Supreme Court distinctly said (31 S. W. [2], l. c. 1044):

"* * * All of the evidence offered in the first case was fully considered by Division 1, and it held that such evidence was not sufficient to fasten upon defendant liability for plaintiff's injury. It therefore reversed the judgment outright.

"How the judgment of a court could more conclusively decide a case upon its merits, we are unable to comprehend. Had Division 1 felt that plaintiff could have produced evidence to prove negligence on defendant's part, it could and doubtless would have remanded the cause for a new trial instead of reversing the judgment outright. Sykes v. Ry. Co., 178 Mo. 693, l. c. 715, 77 S. W. 723; Rutledge v. Ry. Co., 123 Mo. 121, l. c. 140, 24 S. W. 1053, 27 S. W. 327; Strottman v. Ry. Co., 228 Mo. 154, l. c. 187, 128 S. W. 187, 30 L. R. A. (N. S.) 377; Finnegan v. Railroad Co., 244 Mo. 608, l. c. 663, 149 S. W. 620.

"Division 1 had full power to terminate the litigation. **This order of outright reversal resulted in such termination. That judgment is conclusive and binding, not only upon the trial court, but upon the Supreme Court in division and en banc.**"

Likewise in Walsh Const. Co. v. United States Guaranty Co. (C. C. A. 8), 76 Fed. (2) 240-242, it is distinctly said:

> "It will be found quite uniformly to be the rule that when an appellate court, finding under the law that no recovery can be had, uses the word 'reversed' without more this means that the case is at end."

If the judgment of the Supreme Court of Missouri reversing the case outright resulted in a termination of litigation, and means that this case is at an end, such judgment of the Supreme Court of Missouri sought to be reviewed by this petition for certiorari is a final judgment, and one subject to review by this Honorable Court by a writ of certiorari.

CONCLUSION.

From the foregoing we submit that it appears clearly from the facts in this case that the Supreme Court of the State of Missouri erred in refusing to give full faith and credit to the judgment of Circuit Court of Madison County, Illinois, in the appeal from the award of the Illinois Workmen's Compensation Commission. We therefore respectfully submit that this Honorable Court should issue a writ of certiorari in order that such error may be corrected, and in order that the opinion and judgment of the Supreme Court of the State of Missouri may be reversed.

Respectfully submitted,

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